

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JOSE RIVERA,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.
-----X

ORDER

No. 12-CR-169-1 (CS)

No. 16-CV-4983 (CS)

Seibel, J.

For the reasons set forth on the record today, Petitioner Jose Rivera’s petition under 28 U.S.C. § 2255, (No. 12-CR-169 ECF No. 16; No. 16-CV-4983 ECF No. 1), is denied.

As also discussed on the record today, in light of the split in the Circuits, and now within this Court, as to the proper standard to be applied under § 2255 to successive petitions attacking 18 U.S.C. § 924(c) convictions when the record does not reveal whether that conviction rested on the unconstitutional residual clause of § 924(c)(3)(B) or the valid elements clause of § 924(c)(3)(A), I issue a certificate of appealability. *See* 28 U.S.C. § 2253(c) (to obtain certificate of appealability, petitioner must make “a substantial showing of the denial of a constitutional right”); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (required substantial showing made “by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further”).

The Clerk of Court is respectfully directed to close No. 16-CV-4983.

SO ORDERED.

Dated: October 4, 2023
White Plains, New York



CATHY SEIBEL, U.S.D.J.